

Proc A



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

9636

B-192787

MAR 23 1979

The Honorable John L. Burton, Chairman
Subcommittee on Government Activities
and Transportation
Committee on Government Operations
House of Representatives

HSE 01503

Dear Mr. Chairman:

Your letter of October 10, 1978, requested our opinion as to whether the Pioneer Electric Cooperative [Cooperativel of Greenville, Alabama, has a substantial claim of entitlement of a priority to purchase the electric system] at former Craig Air Force Base, Alabama, under the Surplus Property Act of 1944 § 13(d), 50 U.S.C. App. § 1622(d) [1944 Act]. We do not believe that it does.

As you indicated, the Administrator of General Services has transmitted to the House Committee on Government Operations an explanatory statement of a proposal to negotiate a sale of the electric system to the Craig Field Airport and Industrial Authority [Authority], under the Federal Property and Administrative Services Act of 1949 § 203(e)(6), 40 U.S.C. § 484(e)(6) [1949 Act].

While the 1949 Act provides the Administrator a great amount of discretion in negotiating the disposal of surplus property to entities outside the Federal Government, this discretion is limited by certain preferences which have been carried over from the 1944 Act, one of which concerns the sale of "power transmission lines".

In opposition to the proposed negotiated sale to the Authority, the Cooperative has claimed that it is a preferred entity for the purchase and acquisition of the electric system under the following 1944 Act provision:

[Handwritten signature]

004782

"Whenever any State or political subdivision thereof, or any State or Government agency or instrumentality certifies to the Board that any power transmission line determined to be surplus property under the provisions of this Act * * * is needful for or adaptable to the requirements of any public or cooperative power project, such line and right-of-way acquired for its construction shall not be sold, leased for more than one year, or otherwise disposed of, except as provided in * * * this section * * *." (Emphasis added.)

The Cooperative has obtained from the Department of Agriculture's Rural Electrification Administration a "needful for or adaptable to" certification which it asserts will satisfy the requirements of the 1944 Act. Although the preference provision specifically refers to "State" governmental agencies or instrumentalities as being able to provide the necessary certification, we construe the further reference to "State or Government" agencies as not precluding Federal Government agency certification.

The major area of controversy in this case concerns the meaning of the phrase "power transmission line" which is undefined in the statute.

The Cooperative urges a generic definition of the word "transmission" and calls attention to the Glossary of Important Power and Rate Terms, Abbreviations, and Units, prepared in 1949 under the supervision of the Federal Power Commission which contains the following definition:

"TRANSMISSION - The transporting or conveying of electric energy in bulk to a convenient point at which it is subdivided for delivery to the distribution system. Also used as a generic term to indicate the conveying of electric energy over any or all of the paths from source to point of use." (Emphasis added.)

The Cooperative contends that Congress was not concerned with the specific technological function or the magnitude of the capacity of an electric line when it adopted Section 13(d), but rather was endeavoring to have made available on a priority basis to public body or cooperative electric power projects a Federal electric facility determined to be surplus to the Government's needs. In support of this position, the Cooperative presents a statement from former Senator George Aiken, who proposed the amendment providing for this preference. According to the statement, the purpose of the preference amendment was "to give publicly owned or cooperative electric systems priority in acquiring surplus facilities" and the "second definition of 'transmission', as found in the 'Glossary of Important Power and Rate Terms' called 'generic' would seem to be applicable in the case of the Pioneer Electric Cooperative."

The Authority and the General Services Administration (GSA) contend that the term "transmission" should be construed in a non-generic, strictly technical sense; they draw a clear distinction between a "transmission" system (one which conveys high voltage electrical energy in bulk from its source to a distribution system) and a "distribution" system (one which delivers low voltage electrical energy from the transmission system to the user.) Here the Authority and GSA characterize the former Craig Air Force Base electric system as solely a distribution type and maintain, therefore, that it is not a section 13(d) power transmission line. We note, parenthetically, that the characterization of this electric system as a distribution system is unchallenged by the Cooperative because its generic definition of "transmission" includes both transmission and distribution systems as technically defined.

We believe the legislative history of section 13(d), consisting of Senator Aiken's remarks to the Senate, supports the position of the Authority and GSA. Although we respect the recent statements of former Senator Aiken, his interpretation, made some thirty-five years after the 1944 Act, is post-enactment evidence which legally cannot properly be regarded as a conclusive indication of the legislative intent at the time of enactment. See 52 Comp. Gen. 382, 388 (1972).

The intent of Congress to draw a distinction between transmission and distribution systems and then to exclude distribution-type electric systems from section 13(d) preference treatment is indicated in the following passage from the legislative history.

"It is not the purpose of this amendment to restrict in any way the sale of transmission lines which are immediately adjacent to plants which might be sold, or upon the property of plants which might be sold, but simply to cover situations such as the one which exists in New York, and I understand also in some States of the Union." 90 Cong. Rec. 7311 (1944) (remarks of Senator Aiken). (Emphasis added.)

The situation which existed in New York involved a 77 mile long high tension power line which transmitted high voltage energy in bulk from the source to a Federally-owned aluminum production plant. The quoted passage indicates that when "plants" are sold, the low voltage electric distribution system which is immediately adjacent to and/or on the property of the plants is not subject to the preference. Although technically a former Air Force base may not be a production plant, we believe the thrust of that passage encompasses the transmission and distribution lines on or adjacent to the Federal facility being sold.

Finally, we note that the term "transmission line" as defined in a common word usage dictionary means "a metallic circuit of three or more conductors used to send energy usually at high voltage over a considerable distance." Webster's Third New International Dictionary 2429 (1971). Since the words of a statute are presumed to be used with their common meaning, this dictionary definition further supports the position of the Authority and GSA.

Thus, while we think the question is a close one and that the matter is not free from doubt, in light of the above we cannot conclude that the interpretation given the property disposal statutes by GSA, the agency charged with the responsibility for implementing those statutes, is erroneous as a matter of law.

B-192787

We trust this response serves the purpose of your inquiry.

Sincerely yours,

R.F. KELLER

Deputy

Comptroller General
of the United States